

HENRY C. DAVIS

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FEBRUARY 11, 1925.—Committed to the Committee of the whole House and ordered to be printed

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Mr. BROWNE, from the Committee on Naval Affairs, submitted the following

REPORT

[To accompany H. R. 12020]

The Committee on Naval Affairs, to whom was referred the bill (H. R. 12020) for the relief of Col. Henry C. Davis, having had the same under consideration, report thereon with amendments, and as amended recommend that the bill do pass.

In line 4, strike out the word "Lieutenant."

Line 10, strike out the word "lieutenant."

Amend the title so as to read:

A bill for the relief of Colonel Henry C. Davis, United States Marine Corps.

Under an act of Congress, approved October 1, 1890, certain examinations were prescribed for the examination of officers prior to promotion, and this law provides that if an officer fail in his examination for any other reason than physical disability contracted in the line of duty he shall be suspended from promotion for one year when he shall be reexamined, and in case of his failure on such reexamination he shall be honorably discharged with one year's pay.

This law was passed for the Army, but is also applicable by law to the Marine Corps.

Colonel Davis, then a major, became entitled to promotion to the grade of lieutenant colonel on August 29, 1916. He was ordered before the examining board, but the board in his case found that he was neither professionally nor morally qualified and did not recommend his promotion. The finding in regard to his not being professionally qualified was by reason of the fact that his mark in general efficiency was below the required standard, as the board, in assigning a mark under this head, took into consideration certain matters which reflected upon Major Davis's judgment while in command of the marine barracks, Guam. His failure to qualify morally was due to the fact that he had been, on numerous occasions, reported for

indebtedness, and the board evidently considered that he showed a lack of financial responsibility.

Had Major Davis failed professionally only, he would, in accordance with the act of Congress approved August 29, 1916, have lost two numbers in his grade, but by reason of the board finding him also not morally qualified the old act suspending him from promotion for one year became applicable.

The number of officers in the Marine Corps was largely increased at the time Major Davis became due for promotion, and consequently during his year of suspension from promotion numerous officers junior to him were promoted to the rank of lieutenant colonel while he was ineligible for promotion.

His year of suspension from promotion expired in August, 1917. He was then reexamined, passed his examinations, and by reason of a vacancy in the grade of lieutenant colonel occurring October 16 he has now been promoted to fill that vacancy, but, however, he has lost 14 numbers by the promotion of that many of his juniors over his head while under suspension.

I note in your letter that you mention the trial of major Davis which resulted in his losing these numbers. This was not a court-martial, however, but simply a failure to qualify upon his first examination. No moral turpitude was involved, and Colonel Davis's record since his first examination has been excellent, as is evidenced by the fact that when he appeared for reexamination, the board of officers, with all unfavorable matters in connection with his case before them, stated that they considered that he had the mental, moral, physical, and professional qualifications required, and recommended him for promotion.

Under ordinary circumstances, a year's suspension from promotion of a major would undoubtedly be a very few numbers, and the great number lost by Major Davis was caused by the large increase in the corps, and for this reason it would appear that he is entitled to the consideration of Congress. The Army now has a law (Army appropriation act, approved August 29, 1916) which protects an officer from an abnormal loss of numbers due to an increase in the corps or branch of the service of the Army in which serving, by providing that when an officer of the Army is suspended from promotion for one year, his loss of numbers shall be the same as though the corps or branch of the service to which he belongs had not been increased. This proviso, however, is not applicable to the Marine Corps, and the committee is of the opinion that Congress in thus protecting the officers of the Army from an undue loss of numbers realized how great an injustice might be done an officer who was so unfortunate as to be suspended from promotion at a time when a large number of officers were added to the service.

The following letter from the former Major General Commandant of the Marine Corps sets forth fully the facts in the case:

Under date of May 23, 1917, this office placed an indorsement on a letter from Maj. Henry C. Davis, recommending that legislative relief be sought in his case, limiting the loss of numbers occasioned by his failure to qualify for promotion in 1916 to five numbers.

Under date of June 1, 1917, the department informed this office that it was unwilling to initiate remedial legislation as recommended by the Major General Commandant, but reserved an expression of its opinion on the subject until such

a bill, if introduced into Congress, should be referred to the department for its official comment.

A bill was introduced into the House of Representatives January 25, 1918, for the relief of Lieutenant Colonel Davis, and this office, on February 16, 1918, recommended to the department favorable consideration of said bill.

Under date of February 25, 1918, the department, in a letter to the chairman of the House Committee on Naval Affairs, recommended that the bill in question be not favorably considered by the committee.

Under date of July 31, 1919, Colonel Davis again appealed to the department for congressional relief, and this office, under date of August 6, 1919, placed the following indorsement thereon in his case:

Forwarded.

I personally know of the facts mentioned by Colonel Davis as to his indebtedness.

As to the reports made against him by the Governor of Guam, I went very carefully over all of the papers at the time, and I fully concur in what Colonel Davis says on the subject.

The loss of numbers suffered by Colonel Davis was owing to unforeseen circumstances out of all proportion to what would have been a regular punishment for any delinquencies charged against him, but such loss was strictly according to law.

It would take an act of Congress to accomplish what Colonel Davis requests, and, as the Secretary of the Navy disapproved my recommendation for such legislation when last prepared, I can not again recommend action.

In the event that the department is inclined to now approve a bill for the relief of Colonel Davis, this office will gladly express, when called upon, its approval of legislation advancing Colonel Davis on the list of officers of the Marine Corps, as it is believed that the numbers lost by him are out of proportion to any offenses that appeared on his record.

GEORGE BARNET.

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